IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY SECOND DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 1026 of 2001

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 13/06/2001 in WP NO: 15244 OF 1992 on the file of the High Court.)

Between:

N. Gayatri Devi W/o N.R. Murthy, 51 years,
Lecturer in Economics, VMG Mahila Vidya Peeth,

Visakhapatnam

..... APPELLANT/

Respondent No. 4.

AND

1 Smt. M.Mary Helan W/o N.A.D. Pal, aged 40 years,
Lecturer in Economics, VMC. Mahila Vidya peeth Visakhapatnam
Respondent No.1/ Writ petitioner.
2 Govt. of A.P rep by the Secretary
Education (C.E.2-1) Dept Secretariat, Hyderabad
3 The Regional Joint Director of Higher Education
Rajahmundry
4 V.M.C. Mahila Vidya Peeth, rep by its Correspondent
Visakhapatnam -17

.....RESPONDENTS/

Respondents 1 to 3

Counsel for the Appellant: MR.V.JOGAIAH SARMA

Counsel for the Respondent No.1: E. Manohar

Counsel for the Respondent Nos. 2 & 3 : G.P. for Education.

Counsel for the Respondent No.4: MR.M.SREERANGA RAO

The Court made the following :

ORAL ORDER: *(per Smt. T. Meena Kumari, J.)*

The present writ appeal is filed aggrieved by the order dated 13.6.2001 passed by a learned single judge of this Court in W.P. No. 15244 of 1992.

Fourth respondent in the writ petition is the appellant herein. First respondent herein filed the writ petition against the order of the Government in letter No. 377/C.E.II-I/90-3 dated 25.8.1992 confirming the order in RC No. 875.B3/90 dated 1-6-1991 of the Regional Joint Director of High Education, Rajahmundry.

The facts go to show that after the resignation tendered by the appellant, the first respondent was appointed as lecturer in the 4th respondent college through a regular selection process and the university also approved her appointment. Subsequently the appellant herein sought for withdrawal of her resignation and the same was considered and she was once again appointed in the 4th respondent college. When the post of lecturer was sought to be admitted to grant-in-aid, the appellant was given seniority over the first respondent and then the first respondent submitted a representation dated 28-7-1990 to the Director of Higher Education, Hyderabad who directed the management to decide the seniority between the first respondent and the appellant. On that the management in its meeting dated
2-8-1990 considered the question of seniority of the lecturers for the posts to be admitted to grant-in-aid, and prepared a list in which the name of the appellant was not shown and one Kum N. Krishnamma and the first respondent's names were shown as Sl. No. 6(i) and 6(ii) as lecturers in Economics and forwarded the list to the Director of Higher Education accordingly. Thereafter, on 7-8-1990 the Commissioner, Collegiate Education, Hyderabad issued notices to the first respondent and the appellant informing that the Commissioner would be discussing the issue on 22-8-1990. Meanwhile, the Regional Joint Director, Higher Education, Rajahmundry, through his proceedings dated 1-6-1991 set aside the resolution of the Governing body dated 2-8-1990 and determined the seniority of the three lecturers in Economics as 1) Smt. N. Gayathri Devi (appellant herein),
2) Smt. N. Krishnamma, and 3) Smt. M. Mery Helen (first respondent herein).

Accordingly, the seniority was re-fixed through proceedings dated 21.6.1991. Against that order, the first respondent submitted a representation on 5-7-1991 to the Regional Joint Director, but since nothing was heard from him, she preferred an appeal on 5-7-1991 to the Government under Section 89(b) of the A.P. Education Act, 1982. But the Government rejected her appeal on the ground that the Governing body has allowed the appellant to join duty treating the period of her absence from
1-12-1983 to 17-11-1985 as leave on loss of pay with all service benefits and hence, the order under appeal was valid. Aggrieved by the said order, the first respondent filed the writ petition No. 15244 of 1992.

The learned single judge after going through the material placed before him and having gone into the merits of the case, allowed the writ petition holding that reconsideration of the case of the appellant and her placement in the seniority list over and above the first respondent by treating her period of absence as leave on loss of pay with all service benefits is illegal and contrary to law.

The learned single judge further observed that when once the appellant has tendered her resignation to the post she was holding with effect from a particular date, it will come into effect from that date or if no date is mentioned, the resignation come into effect on the date of acceptance of resignation by the employer, more particularly on the date of communication of acceptance of the resignation by the employer. The learned judge further observed that if once the employee submits resignation to the post with immediate effect irrespective of the fact that it is accepted by the management or not and the employee will loose the job and lien on the post and therefore, the reasoning given by the Regional Joint Director of Higher Education in his proceedings dated 1-6-1991 does not stand to judicial scrutiny and consequently allowed the writ petition. Aggrieved by the same, 4th respondent in the writ petition filed this appeal.

The learned counsel for the appellant submitted that it is an admitted fact that the appellant had tendered her resignation to her post on 1-12-1983, but at the request of the students' union she submitted a representation to the management on 15.12.1983 revoking her resignation and that the management took her back into service on
17-11-1985, with all benefits, treating the period of absence as leave on loss of

pay. However, in the meanwhile, the first respondent herein and one Krishnamma were appointed, of course, their services were also approved by the competent authorities. He further contends that in view of the fact that the Regional Joint Director and the Government, in their respective proceedings, have categorically found that the appellant is senior to the first respondent, the order under appeal is liable to be set aside. He further contended that if the appellant is not placed over and above the first respondent in the seniority list, as there was only one post available, and if she is not restored of her seniority as fixed by the Regional Joint Direction, she had to loose her job. Further it has been contended that the seniority of the appellant has been restored by the governing body in pursuance of the orders of the Regional Joint Director, Rajahmundry that she is the senior to the appellant and said Krishnamma, having been appointed on 2-11-1981 and hence the order of the Regional Joint Director and as confirmed by the Government needs no interference and accordingly, the order under appeal is liable to be set aside.

We had an opportunity to go through the proceedings of the Regional Joint Director, Higher Education, Rajahmundry dated 1-6-1991 where under the resolution of the governing body of the college was set aside. The Regional Joint Director observed that having taken the appellant back into service without prejudice to her seniority and having already regulated the period for which she was out of service from
1-12-1983 to 17-11-1985 as leave on loss of pay through a resolution passed by the governing body, the management cannot deny her rightful seniority and that too without giving any prior notice to her. With the above observation, the Regional Joint Director had fixed the seniority of the appellant over and above the first respondent herein and one Krishnamma, who were admittedly appointed as lecturers in Economic in the fourth respondent college subsequently.

However, it is to be observed that the first respondent was recruited through regular selection process and the university also approved her appointment. It is also significant to note that the first respondent was selected to the post, which was earmarked for B.C (C) category. It is to be further observed that the appointment of the first respondent was made to the vacancy arose consequent to the resignation tendered by the appellant. Therefore, when

once the University has also ratified the action of the management in appointing the first respondent in the said vacancy, which had arisen consequent to the resignation tendered by the appellant, question of fixing the seniority of the appellant over and above the first respondent does not arise at all.

However, the observation of the Regional Joint Director that the letter of acceptance of resignation was not done in the present case cannot be a valid ground since after the appellant had tendered her resignation to the said post, the management had filled up the post with the first respondent herein by notifying the post. So it must be deemed that there was acceptance of resignation from the side of the management.

In any view of the matter and for the foregoing reasons, we are of the opinion that the action of the Regional Joint Direction in setting aside the seniority list sent by the management of the college is not warranted. Therefore, we do not want to interfere with the cogent reasoning given by the learned single judge in passing the order under appeal and accordingly, the appeal is liable to be dismissed.

In the result, the appeal is dismissed. No costs.

T. MEENA KUMARI, J.

P. LAKSHMANA REDDY,J.

22-07-2005

kvsn

To

1. The Secretary, Govt. of A.P, Education (C.E.2-1) Dept Secretariat, Hyderabad.
2. The Regional Joint Director of Higher Education
   Rajahmundry, East Godavari.
3. The Correspondent, V.M.C. Mahila Vidya Peeth, Visakhapatnam -17

4. Two CCs to the GP for Education, High Court buildings, Hyderabad. (OUT)

5. 2 CD copies.

6. Copy to Sri V. Jogayya Sarma, Advocate for the appellant.